IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 2236 of 2007
with
FIRST APPEAL No. 2237 of 2007
to
FIRST APPEAL No. 2258 of 2007

For Approval and Signature:

HONO'BLE MR.JUSTICE J.M.PANCHAL

HON'BLE SMT. JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SPL. LAND ACQ. OFFICER & 1 - Appellant(s)
Versus
JASVANTLAL ZINABHAI & 1 - Respondent(s)

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Appearance :
MR SUNIT SHAH, GP for Appellants (In FA 2236/2007 to 2246/2007)
MR JK SHAH, AGP, for Appellants (In FA 2247/2007 to 2258/2007)
MR SAURABH AMIN for Respondent(s)-Claimant(s) (In all FAs)

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CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL
and
HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 04/05/2007

ORAL JUDGMENT (Per : HONOURABLE MR.JUSTICE J.M.PANCHAL)

1. What is challenged in these Appeals filed under Section 54 of the Land Acquisition Act, 1894 (“the Act” for short) read with Section 96 of the Code of Civil Procedure, 1908, is the legality of the common judgment and award dated January 25, 2006, rendered by the learned 4th Additional Senior Civil Judge, Ahmedabad (R) at Navrangpura, in Land Acquisition Case Nos.2454/1996 to 2476/1996 by which the claimants have been awarded additional amount of compensation at the rate of Rs.19.40 ps. per sq.mt. for their acquired lands over and above the offer of compensation made to them at the rate of Re.0.60 ps. per sq.mt. by the Special Land Acquisition officer vide award dated June 13, 1996.

2. The Executive Engineer, Narmada Yojna, Division No.4/3, Mehsana, made a proposal to the State Government to acquire the lands of village Sitapur, Taluka: Viramgam, District: Ahmedabad, for the public purpose of construction of canal under the Narmada

Project. On perusal of the same, the State Government was satisfied that the lands of village Sitapur mentioned in the proposal were likely to be needed for the said public purpose. Therefore, notification under Section 4 of the Act was issued which was published in the official gazette on June 23, 1993. The owners of those lands, proposed to be acquired, were served with notices and they had filed their objections. Thereafter, necessary inquiry as contemplated by Section 5A of the Act was conducted and a report was submitted by the Special Land Acquisition Officer as contemplated by Section 5A(2) of the Act. On consideration of the said report, the State Government was satisfied that the lands of village Sitapur, which were specified in the notification published under Section 4(1) of the Act, were needed for the public purpose of construction of canal under the Narmada Project. Therefore, a declaration under Section 6 of the Act was made which was published in the official gazette on June 14,

1994. The interested persons were thereafter served with notices for determination of compensation payable to them. The claimants appeared before the Special Land Acquisition Officer and claimed compensation at the rate of Rs.100/- per sq.mt. However, having regard to the materials placed before him, the Special Land Acquisition Officer offered compensation to the claimants at the rate of Re.0.60 ps. per sq.mt. by his award dated June 13, 1996. The claimants were of the opinion that the offer of compensation made by the Special Land Acquisition Officer was totally inadequate. Therefore, they submitted applications under Section 18 of the Act requiring the Special Land Acquisition Officer to refer their cases to the Court for the purpose of determining just amount of compensation payable to them. Accordingly, References were made to the District Court, Ahmedabad (R), where they were registered as Land Acquisition Case Nos.2454/1996 to 2476/1996.

3. On behalf of the claimants, witness Jaswantbhai Zinabhai Patel was examined at Ex.69. The witness mentioned in his testimony that the lands acquired were irrigated lands and that each claimant was able to raise crops of Cotton, Juwar, Millet, Wheat, Cumin seeds, Til, etc. The witness mentioned that the claimants had employed scientific methods for the purpose of cultivation and therefore, each claimant was earning Rs.40,000/- to Rs.45,000/ per year per Vigha from the sale of agricultural produces. The witness informed the Court that the population of his village was 8000 and that his village Sitapur was situated on Viramgam-Becharaji State Highway. After stating that his village Sitapur was situated at a distance of 7 kilometers from Becharaji pilgrimage, the witness stated that his village was fully developed. According to him, all the facilities such as Post Office, Telephone Exchange, Nationalized Banks, District Cooperative Bank, Cooperative Ginning and Processing Mills, Primary Health Center,

private dispensaries, schools, library, etc. were available in his village and that electricity was available all the 24 hours. The witness further claimed that the lands of his village were highly fertile and had more potential value in comparison to the lands situated in the villages nearby. The witness stated in his testimony that village Kachrol was just adjoining his village Sitapur and that the boundaries of village Sitapur were touching the boundaries of village Kachrol. The witness also stated that from his village, village Kachrol was approachable by Tar road. The witness further mentioned that village Nayakpur was also situated near village Sitapur but the people of village Kachrol and village Nayakpur had to go to village Sitapur for the purpose of purchase of their daily needs. The witness mentioned that his village Sitapur was center of commercial activities. According to this witness, Narmada canal branch under the Narmada Project was coming from Kachrol to village Sitapur and was going

towards village Nayakpur. The witness mentioned that for the purpose of construction of canal under the Narmada Project, lands of village Kachrol were acquired pursuant to publication of notification issued under Section 4(1) of the Act on June 23, 1993, with reference to which the learned Extra Assistant Judge, Ahmedabad (R) had awarded compensation to the claimants at the rate of Rs.19.30 ps. per sq.mt. in Land Acquisition Case No.2477/1996 and other cognate matters and therefore, the claimants were entitled to enhanced compensation on the basis of the said award. The witness further stated that the population of village Kachrol was 1500 whereas that of his village was more than 8000 and his village was more developed than village Kachrol and was main center of Mandal Taluka. The witness produced the certified copy of the previous award of the Reference Court relating to the lands of village Kachrol at Ex.66. The witness also stated that the lands of village Nayakpur were also acquired for the purpose of

construction of canal under the Narmada Project pursuant to publication of notification issued under Section 4(1) of the Act in the official gazette on November 13, 1992, and the learned Extra Assistant and Special Judge, Ahmedabad (R), had awarded compensation to the claimants at the rate of Rs.19.10 per sq.mt. in Land Acquisition Case No.760/1998 and other cognate matters, as a result of which, the claimants in the instant cases were entitled to enhanced compensation on the basis of the said award. The witness produced certified copy of the previous award of the Reference Court relating to the lands of village Nayakpur at Ex.67.

This witness was cross-examined by the learned counsel for the acquiring authorities but nothing substantial could be elicited nor the assertion made by the witness that his village Sitapur was more developed than village Kachrol and village Nayakpur or that the lands of village Sitapur had better potentiality

than the lands of village Kachrol and village Nayakpur could be demonstrated to be untrue.

4. On behalf of the acquiring authorities, witness Girishkumar Amrutlal Shah, who was then discharging duties as Deputy Executive Engineer, Narmada Nigam, was examined at Ex.81. The witness mentioned in his testimony that the Special Land Acquisition Officer had taken into consideration all the relevant factors before determining the market value of the lands acquired in the instant cases and therefore, the claimants were not entitled to enhanced compensation. However, in his cross-examination, the witness had to admit that at the time when notification under Section 4(1) of the Act was published in the official gazette for acquiring the lands in the instant cases, he was serving at village Kapadvanj and he had not seen the lands acquired nor he was knowing anything as to what was being grown on the lands acquired. After admitting that he had not played any role in the proceedings

which were initiated for acquisition of the lands in the instant cases, it was mentioned by the witness that the boundaries of village Kachrol were adjoining to village Sitapur. The witness stated that Survey Nos.327, 328 and 329 of village Sitapur were adjoining to Survey Nos.459, 489 and 454 of village Kachrol. The witness further stated that the boundaries of village Sitapur were adjoining to the boundaries of village Nayakpur. It was further stated by the witness that village Sitapur was situated on Viramgam-Becharaji State Highway whereas village Kachrol was situated at a distance of five to six kilometers from the Highway.

5. It may be mentioned that after the evidence was recorded, on behalf of the appellants, a list of documents was presented before the Court at Ex.84. Along with the said list, five sale-deeds were sought to be produced at Ex.85 to 89.

6. On appreciation of evidence adduced by the parties, the Reference Court was of the opinion that the previous award of the Reference Court relating to the lands of village Kachrol which was produced at Ex.66 was a relevant piece of evidence and furnished good guidance for the purpose of determining the market value of the lands acquired in the instant cases. The Reference Court was also of the opinion that the sale-deeds which were produced by the appellants were not relevant for the purpose of determining the market value of the lands acquired in the instant cases. After placing reliance on the previous award of the Reference Court relating to the lands of village Kachrol, the Reference Court has awarded additional amount of compensation to the claimants at the rate of Rs.19.40 per sq.mt. by the impugned award giving rise to the abovenumbered Appeals.

7. This Court has heard Mr.Sunit Shah, learned Government Pleader with Mr.J.K.Shah, learned

Assistant Government Pleader for the appellants and Mr.Saurabh Amin, learned counsel for the claimants, at length and in great detail. This Court has also considered the paper-book supplied by the learned counsel for the claimants which includes oral as well as documentary evidence adduced by the parties before the Reference Court.

8. It is true that the witness for the claimants could not make his assertion good that each claimant was earning Rs.40,000/- to Rs.45,000/- per year per Vigha from the sale of agricultural produces. However, the said fact is of no consequence because the claimants had not claimed enhanced compensation on yield basis nor the claimants had claimed enhanced compensation on the basis of comparable sale instances. The claimants had relied upon two previous awards of the Reference Court relating to the lands of village Kachrol and one previous award of the Reference Court relating to the lands of

village Nayakpur for the purpose of claiming enhanced compensation.

9. Exhibit 66 indicates that pursuant to publication of notification issued under Section 4(1) of the Act in the official gazette on June 23, 1993, several survey numbers of village Kachrol were acquired for the public purpose of construction of canal under the Narmada Project. Therein, the Special Land Acquisition Officer, by his award dated June 13, 1996, had offered compensation to the claimants at the rate of Rs.1.05 ps. per sq.mt. for irrigated lands and Rs.0.70 ps. per sq.mt. for non-irrigated lands. Feeling aggrieved, the claimants had sought References. Accordingly, References were made to the District Court, Ahmedabad (R) where they were numbered as Land Acquisition Reference Nos.2477/1996 to 2496/1996 and 727/1998. Therein, on behalf of the claimants, witness Gautambhai Shantilal Vora was examined at Ex.43 whereas on behalf of the acquiring

authorities, witness Antimbabu Durlabhbhai Desai was examined. Ultimately, on analysis of the evidence adduced in the said case, the Reference Court by judgment and award dated November 12, 2002, held that the claimants were entitled to additional amount of compensation at the rate of Rs.19.30 ps per sq.mt.

10. Another award of the Reference Court relating to the lands of village Nayakpur was produced by the claimants at Ex.67. A perusal of the same indicates that pursuant to publication of notification issued under Section 4(1) of the Act which was published in the official gazette on November 13, 1992, the lands of village Nayakpur were acquired for the public purpose of construction of canal under the Narmada Project. In the said case, the Special Land Acquisition Officer, by his award dated June 13, 1996, had offered compensation to the claimants at the rate of Rs.1.35 ps. per sq.mt. for irrigated lands and Re.00.90 ps.

per sq.mt. for non-irrigated lands. Feeling aggrieved, the claimants had sought References. Accordingly, References were made to the District Court, Ahmedabad (R) where they were numbered as Land Acquisition Case Nos.760/1998 and other cognate mattes. Therein, on behalf of the claimants, witness Vitthalbhai Chaturbhai Patel was examined at Ex.80 whereas on behalf of the acquiring authorities, witness Kanaiyalal Atmaram Patel was examined at Ex.32. Therein, Ex.29, which was the previous award of the Reference Court relating to the lands of village Kachrol was relied upon and the claimants were awarded additional amount of compensation at the rate of Rs.19.10 ps. per sq.mt. by judgment and award dated September 30, 2004.

11. Exhibit 72, which is the previous award of the Reference Court relating to the lands of village Kachrol, indicates that several survey numbers of village Kachrol were acquired pursuant to publication of notification under

Section 4(1) of the Act in the official gazette on March 11, 1998, for the public purpose of construction of canal under the Narmada Project. In those cases, the Special Land Acquisition Officer, by his award dated June 14, 1999, had offered compensation to the claimants at the rate of Rs.1.60 ps per sq.mt. Feeling aggrieved, the claimants had sought References. Accordingly, References were made to the District Court, Ahmedabad (R) where they were numbered as Land Acquisition Case Nos.533/1999 to 549/1999. In those cases, on behalf of the claimants, witness Arvindbhai Babubhai Patel was examined at Ex.31 whereas on behalf of the acquiring authorities, witness Jagdishprasad Jayaprasad Gupta was examined at Ex.39. On the basis of evidence adduced therein, the Reference Court awarded additional amount of compensation to the claimants at the rate of Rs.28/- per sq.mt. by judgment and awarded dated September 5, 2003.

12. On re-appreciation of evidence, this Court

finds that Ex.66, which is the previous award of the Reference Court relating to the lands of village Kachrol, is proximate in point of time to the publication of notification issued under Section 4(1) of the Act. In the said case, notification under Section 4(1) of the Act was published in the official gazette on June 23, 1993, whereas in the instant case also, notification issued under Section 4(1) of the Act was published on June 23, 1993. Further, it is satisfactorily established by the witness for the claimants that village Sitapur was more developed than village Kachrol and was situated at Viramgam-Becharaji State Highway. The testimony of the witness examined by the claimants makes it more than clear that village Sitapur was better situated than village Kachrol and the lands situated in village Sitapur had better potentiality. Even at the time of publication of notification under Section 4(1) of the Act, the population of village Kachrol was hardly 1200 whereas that of village Sitapur was more than 8000. On

the facts and in the circumstances of the case, this Court is of the opinion that the Reference Court did not commit any error in placing reliance on the previous award of the Reference Court relating to the lands of village Kachrol for the purpose of determining the market value of the lands acquired in the instant case. It is well settled that the previous award of the Reference Court relating to the lands of a village which has attained finality can be relied upon as a good piece of evidence for the purpose of evaluating the market value of the similar lands acquired from the adjoining village. As observed earlier, the boundaries of village Sitapur and village Kachrol touch each other. This becomes evident from the cross examination of the witness for the appellants. Therefore, the determination of market value of the lands acquired in the instant case on the basis of the previous award of the Reference Court relating to the lands of village Kachrol cannot be said to be erroneous so as to

warrant interference of this Court in the instant Appeals.

13. It may be mentioned that the claimants had also relied upon the previous award of the Reference Court relating to the lands of village Kachrol which was produced at Ex.72, but therein, notification issued under Section 4(1) of the Act was published on March 11, 1998, whereas in the instant cases, notification issued under Section 4(1) of the Act was published in the official gazette on June 23, 1993, and therefore, Ex.72 is rightly not treated as comparable instance for the purpose of determining the market value of the lands acquired in the instant case. So also, Ex.67, which is the previous award of the Reference Court relating to the lands of village Nayakpur, is rightly not taken into consideration while determining the market value of the lands acquired in the instant cases.

14. The contention that the market value of the lands acquired in the instant cases should have been determined on the basis of the sale-deeds produced at Ex.85 to Ex.89 cannot be accepted. It is relevant to notice that those sale-deeds were brought on the record of the case by list Ex.84 which was submitted in the Court on October 21, 2005. By that time, not only recording of the evidence of the witness for the claimants was over but the recording of evidence of the witness examined by the appellants was also over. The evidenciary value of the documents produced at Ex.85 to Ex.89 could not be established by the witness for the appellants nor any opportunity was offered to the witness for the claimants to point out to the Court that the documents produced at Ex.85 to 89 were not relevant for the purpose of determining the market value of the lands acquired in the instant cases. What is relevant to notice is that the sale-deeds Ex.85 to Ex.87 were executed on April 12, 2004, whereas Ex.88 was executed on April 26,

2004 and Ex.89 was executed on June 11, 2004. Thus, none of the sale-deeds produced by the appellants was proximate to the notification published under Section 4(1) of the Act on June 23, 1993. Further, a perusal of these documents indicates that except Ex.89, the sale-deeds related to sale of non-irrigated lands whereas it is firmly established in these cases that the lands acquired were irrigated lands and highly fertile. Further, the genuineness of those documents also could not be satisfactorily established by the witness for the claimants. Under the circumstances, this Court is of the opinion that the Reference Court was justified in not determining the market value of the lands acquired in the instant cases on the basis of the sale-deeds produced at Ex.85 to Ex.89.

15. On re-appreciation of evidence adduced by the parties, this Court is of the opinion that correct findings of facts have been recorded by the Reference Court on appreciation of

evidence adduced before it, to which well-settled principles of law are applied. It may be stated that village Sitapur is better located than village Kachrol and is a commercial center. But more compensation than what is mentioned in Ex.66 is not awarded to the claimants of these cases. Thus, the compensation awarded to the claimants cannot be said to be on higher side. The learned Government Pleader could not persuade this Court to take a view different than the one taken by the Reference Court on appreciation of evidence. Therefore, the Appeals, which lack merits, deserve to be dismissed.

16. For the foregoing reasons, all the Appeals fail and are dismissed. There shall be no orders as to costs. The Registry is directed to draw decree in terms of this Judgment immediately.

(J.M.Panchal, J.)

(Smt.Abhilasha Kumari, J.)

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